

ADVISORY OPINION 95-012

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121. 135(4).

July 28, 1995

Hon. Richard L. Robinson
Graydon, Head & Ritchey
Fuller Square Building, Suite 480
8100 Burlington Pike
Florence, Kentucky 41042

Dear Mr. Robinson:

This is in response to your June 27, 1995, letter in which you request an advisory opinion on behalf of an individual who intends to raise funds for the purpose of making an independent expenditure(s) for a candidate or candidates in the November general election.

The following statutory definitions applicable to your request will be referenced in this opinion:

1. An "independent expenditure" is "one made for a communication which expressly advocates the election or defeat of a clearly identified candidate or slate of candidates, or the passage or defeat of a constitutional amendment or public question which will appear on the ballot and which is not made with any direct or indirect cooperation, consent, request, suggestion, or consultation involving a candidate, slate of candidates, campaign committee, political issues committee." KRS 121.150(1).
2. A "contribution" is any "payment, distribution, loan, deposit, or gift of money or other thing of value, to a slate of candidates, its agent, a committee, or contributing organization." KRS 121A.010(11)(a).
3. A "campaign committee" is "one (1) or more persons who receive contributions and make expenditures to support or oppose one (1) or more specific candidates or slates of candidates for nomination or election to any state, county, city, or district office." KRS 121A.010(9)(a).

An individual or group may expend unlimited amounts toward the election of candidates because such expenditures, if independent of the candidate, are constitutionally protected under the First Amendment to the U.S. Constitution. Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). Conversely, contributions to candidates may be regulated because of the government's compelling interest in preventing corruption or the appearance of corruption in the political process. Citizens Against Rent Control v. Berkeley, 454 U.S. 290, 102 S.Ct. 434, 70 L.Ed.2d 492 (1981).

1. **In order to raise funds and make expenditures, does a committee need to be established? If so, what kind of committee must it be and what are the reporting requirements?**

Based on the facts provided in your advisory opinion request, your client proposes to raise funds from another individual(s) and make expenditures for candidates in the November election. The activity proposed would require registration of a "campaign committee" hereinafter referred to as ("committee") as defined by KRS 121A.010(9)(a) for the gubernatorial candidates and KRS 121.015(3)(a) for non-gubernatorial candidates. If the expenditure is independent, the committee must be unauthorized by the candidate in accordance with KRS 121.210(4), and the candidate's campaign committee could have no authority over or communication with the unauthorized campaign committee. The unauthorized committee is not permitted to use the candidate's name in the committee name and must file reports required by KRS 121.180. (KRS 121.210(4)).

After registration, campaign committees must report all contributions and expenditures to the Registry pursuant to KRS 121.180(3)(a) or KRS 121A.020(5) depending on whether the committee supports gubernatorial or non-gubernatorial candidates.

KRS 121.180(3)(b) 1.-3. requires reporting with 32 and 15 day pre-election reports and 30 day post-election reports. KRS 121A.020 requires monthly reporting until fifty-six (56) days prior to an election after which reports are filed every fourteen (14) days.

A committee must also report its independent expenditures when they exceed five hundred dollars (\$500) in the aggregate during an election. KRS 121.150(1) requires a representative from the committee to sign a sworn statement that the expenditure was an independent expenditure and no prior communication was made with the campaign concerning the expenditure.

2. What are the restrictions on contributions to a person or committee conducting an independent expenditure?

KRS 121.150(6) provides that "no candidate, campaign committee, political issues committee, nor anyone acting on their behalf, shall accept a contribution of more than five hundred dollars (\$500) from any person, permanent committee, or contributing organization in any one (1) election. ..."

3. What are the restrictions on expenditures from a person or committee conducting an independent expenditure?

There is no limitation on the amount of an independent expenditure made by an individual or a committee. However, KRS 121.150(1) confines the individual or committee's independent expenditures to those "made for a communication which expressly advocates the election or opposes a candidate, the passage or defeat of a constitutional amendment, or public question. . . ." Expenditures for goods or services which are not for communication would be in-kind contributions. Most importantly, the independent expenditure must not involve (either directly or indirectly) any contact or communication with the candidate's campaign concerning the expenditure. Again, if a committee makes independent expenditures, the committee must report such expenditures when they exceed five hundred dollars (\$500) in the aggregate during an election.

4. What are the restrictions on who may contribute to the person or committee conducting the independent expenditure?

KRS 121.025, KRS 121.035, KRS 121.150(21), and Section 150 of the Kentucky Constitution prohibit a corporate contribution either directly or indirectly to a candidate or committee. This

includes "in-kind" contributions as well as money contributions. For example, any use of corporate property such as computers, telephones, or postage by a committee must be reimbursed. Otherwise, the committee has accepted an illegal corporate contribution.

5. What are the restrictions on a person or committee conducting an independent expenditure relative to whom they hire to consult, advise, print, mail, produce, or place media, etc.?

An expenditure may be considered independent under the following circumstances:

- A person or a committee does not coordinate, consult, or communicate with the campaign about the expenditure;
- A former employee or agent of the campaign does not coordinate or consult with the person or committee making an expenditure;
- A person or committee does not coordinate, communicate, or consult with the campaign's vendors;
- The independent expenditure does not involve the distribution or republication of campaign material produced or prepared by a candidate's campaign.

6. As it applies to individuals, members of a committee, contributors, or vendors, what is the intent of the following statement in KRS 121.150(1):

"No candidate, slate of candidates, campaign committee, political issues committee, nor anyone acting on their behalf shall have any communication with another person nor anyone on his behalf regarding that person's making of an independent expenditure on behalf of that candidate, slate or committee prior to the time the independent expenditure is made."?

The intent of the statute is to insure that independent expenditures are in fact "independent" and are not in any manner coordinated or suggested by the candidate's campaign committee prior to the time the expenditure is made. As stated in the response to question number 5, an independent expenditure may not be coordinated with the campaign's vendors who design, produce, or distribute the campaign's paraphernalia.

7. What are the penalties for violation of KRS 121.150(1) or any rules established in this opinion?

KRS 121.990 provides that "any person who knowingly violates any of the provisions of KRS 121.150 to 121.230 . . . or KRS Chapter 121A, shall for each offense, be guilty of a Class D felony."

KRS 121.990(4) also provides that an election may be voided if a candidate, slate or campaign treasurer knowingly violates KRS 121.150 to 121.220 or KRS Chapter 121A.

Sincerely,

Rosemary F. Center
General Counsel

RFC/db

